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30 **UNITED STATES DISTRICT COURT**
31 **NORTHERN DISTRICT OF CALIFORNIA**

32 ANIBAL RODRIGUEZ, SAL
33 CATALDO, JULIAN
34 SANTIAGO, and SUSAN LYNN
35 HARVEY, individually and on behalf of all
36 others similarly situated,

37 Plaintiffs,
38 vs.
39 GOOGLE LLC,
40 Defendant.

41 Case No.: 3:20-cv-04688-RS

42 **PLAINTIFF SAL CATALDO'S MOTION**
43 **FOR VOLUNTARY DISMISSAL**
44 **WITHOUT PREJUDICE**

45 The Honorable Richard Seeborg
46 Courtroom 3 – 17th Floor
47 Date:
48 Time:

1 **I. INTRODUCTION**

2 One of the four class representatives appointed by the Court—plaintiff Sal Cataldo—
3 respectfully requests dismissal of his claims without prejudice pursuant to Rule 41 of the Federal
4 Rules of Civil Procedure. Under Rule 41, because Google answered and moved for summary
5 judgment, the Court or Google must approve this request. Google refused, and Mr. Cataldo
6 therefore now seeks relief from the Court. There is no prejudice to Google or basis for Google to
7 oppose this motion, and the Court should therefore grant this motion and dismiss Mr. Cataldo’s
8 claims without prejudice. The other class representatives will be prepared to represent the certified
9 classes at trial starting on August 18, 2025, and granting this motion is permissible and proper.

10 **II. LEGAL STANDARD**

11 After an answer is filed, a party may only dismiss his or her claims by Court order pursuant
12 to Federal Rule of Civil Procedure 41(a)(2). “A dismissal under Rule 41(a)(2) normally is without
13 prejudice, as explicitly stated in that rule.” *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001).
14 The reasons for a party’s election to seek voluntary dismissal are privileged, and the possible
15 explanations are many, so their withdrawal from the litigation has no probative value. *See Bolton*
16 *v. Tesoro Petroleum Corp.*, 871 F.2d 1266, 1277 (5th Cir. 1989) (“Voluntary dismissal of a suit
17 can occur for a variety of reasons. The relevance of the [dismissed claims] was, thus, marginal.”).

18 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless
19 a defendant can show that it will suffer some plain legal prejudice as a result.” *Smith*, 263 F.3d at
20 976. Legal prejudice means prejudice to “some legal interest, some legal claim, [or] some legal
21 argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). “[I]n
22 determining what will amount to legal prejudice, courts have examined whether a dismissal
23 without prejudice would result in the loss of a federal forum, or the right to a jury trial, or a statute-
24 of-limitations defense.” *Id.* (collecting cases). Furthermore, “the fact that the defendant has
25 already begun trial preparations does not constitute prejudice.” *In re Lowenschuss*, 67 F.3d 1394,
26 1400–01 (9th Cir. 1995).

1 **III. ARGUMENT**

2 This motion should be granted because Google cannot establish any prejudice. This class
3 action is set to be tried to a jury starting on August 18, 2025, with three other plaintiffs appointed
4 as class representatives. There is no need for a fourth class representative, particularly given the
5 time constraints provided to try the case. By granting this motion, Mr. Cataldo's claims will be
6 adjudicated just like any other absent class member who did not elect to opt out of the certified
7 classes. Google will not face another lawsuit from Mr. Cataldo covering these claims and issues,
8 and Google's preparations for trial would have occurred regardless.

9 Under these circumstances, the motion should be granted. *See, e.g., Kurin, Inc. v.*
10 *Magnolia Med. Tech., Inc.*, 2021 WL 5823707, *2 (9th Cir. Dec. 8, 2021) (granting voluntary
11 dismissal without prejudice over non-moving party's argument that excessive expenses were
12 incurred); *see also Robinson v. St. Francis Hosp.*, 2025 WL 371814, *2 (W.D. Wash. Feb. 3, 2025)
13 (granting voluntary dismissal without prejudice during pendency of summary judgment motion);
14 *Herbalife Int'l of Am., Inc. v. Kamel*, 2024 WL 5416968, **2–3 (C.D. Cal. Apr. 11, 2024) (granting
15 voluntary dismissal without prejudice following years of litigation and motions practice). Indeed,
16 denying the motion would effectively force Mr. Cataldo to remain in the action and sit for trial
17 against his wishes, which would be a strange and unjustified outcome.

18 **IV. CONCLUSION**

19 For these reasons, Plaintiff Sal Cataldo respectfully requests that the Court dismiss his
20 claims without prejudice.

21 Dated: July 30, 2025

Respectfully submitted,

22 By: /s/ Mark C. Mao

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